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NEPA Draft Report Comments
c/o NEPA Task Force
House Resources Committee
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Washington, DC 20515
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Dear NEPA TASK FORCE MEMBERS ,

I strongly oppose any changes to or weakening of the National Environmental Policy Act (NEPA). I not only use public lands for wildlife watching, research, education, and enjoyment, but I frequently directly participate in the NEPA process. Many of my clients include federal land management agencies (U.S. Forest Service, Bureau of Land Management, Bureau of Reclamation, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service) and Colorado state agencies. I also sit on a number of advisory boards and act as a pro bono consultant to local municipalities who are keenly interested in the natural resources that benefit their communities.

Many depend on the environment for our livelihood. Wildlife-related recreation (plant and wildlife watching, photography, etc.) generates more than \$100 billion in annual economic activity in the U.S. and supports countless jobs and businesses. Healthy ecosystems are essential to strong economies.

However, the NEPA task force report asserts that that public support calls for “modest changes” to NEPA or its regulations. With all due respect, I believe the task force is a bit misguided if they truly believe that what you propose are “modest.” I would easily argue these changes are “radical.”

Here are my specific concerns:

1. **Process:** I question why the task force even believes legislation is needed - that the regulations promulgated by the agencies (for better or worse) allow agency and local discretion? It seems like a good Republican ideal that is already in place, but when it's not working to the advantage (or it seems to have backfired by those private interests that support local control), then legislating changes is the answer? You, dear members, need to take a broader look at how NEPA protects the public as a whole, not creating loopholes for industry under the guise of economic growth and sustainability.
2. **Enhancing public participation by directing CEQ to prepare regulations requiring agencies to give greater weight to issues and concerns raised by local interests when evaluating environmental impacts.** See number 1 above. **HOWEVER**, while it is important to have local input from stakeholders at the state, local, and Tribal level; the task force is attempting to exclude taxpayers who may not live in the local area from participating in the process equally. To my knowledge, since when is it the federal government's responsibility to provide federal land welfare for logging, mining, and livestock interests. If this isn't welfare hidden under “job creation,” then what is? The federal government already has made provisions to circumvent NEPA. Here are few other reminders:

- Let me remind you of Congressional action just this past December when Republican leaders in Congress abandoned their efforts to revive the controversial practice of selling federal land to mining companies as a budget measure. The proposal set off emotional debate in western states. Environmentalists, hunters, and Democratic governors lined up against it. And many of these citizens who opposed Mr. Pombo's proposal are also Republicans.
 - Under the 1872 Mining Law, mining companies can buy public land for \$2.50 or \$5 an acre. This patent gives companies absolute title to the property. Under Mr. Pombo's proposal, mining companies would have once again be able to buy public land, this time for \$1,000 an acre - still far below the true value of the mineral rich land. I failed to see the accountability in this type of legislation, and I see the Task Force recommendations in much the same light.
 - I also come from a strong 124-year family ranching background in the Blue River area of Arizona. I've advised my family of the role NEPA plays. NEPA's environmental analysis, public disclosure, and public review requirements help ensure that federal agencies do not engage in activities that threaten our environment, jobs, industries, economies or public health.
3. **Addressing delays in the process:** I understand that some find NEPA's mandates cumbersome, but high quality land and resource management is a cumbersome process, as is democracy itself. NEPA protects the public from careless or dangerous federal actions. If NEPA is weakened, federal bureaucrats will have ever greater and more arbitrary power to determine how our taxes are used and how our resources and public health are protected.
- The National Environmental Policy Act is not only central to our ability to conserve water, plants, wildlife, and fish and their habitats; it is also the law which brings the public and democracy into environmental policy and management.
 - NEPA requires that the best science will be used to design federal projects and minimize damage to public health and public resources. NEPA requires that federal agencies consider alternatives in order to minimize risks.
 - Therefore, NEPA is integral to our democracy - it costs money and it takes time, but so do most worthwhile endeavors, including democracy itself. Adding mandatory timelines for the completion of NEPA documentation and only allowing for occasional extensions is ludicrous. It is clear to me that all of you have never been intimately involved in developing alternatives, much less analyzing them. And if my memory serves me, I believe it is Mr. Pombo who has been driving changes in other regulations (e.g., Endangered Species Act, as amended in 1973) to require the best science. As Mr. Pombo is aware, the Preble's meadow jumping mouse is just one of those issues where a poorly designed study (incidentally, conducted by a colleague and friend with whom I disagreed on his methods), but was superseded by a far superior GOVERNMENT genetic study to determine the distinct genetic separation of a species.
 - The point here is that science and analysis takes time, especially when we are considering federal actions that will have affects for 20, 30, 50, even 100 years or more. Even with NEPA in place as it is, there are still federal actions in mining, forestry/logging, and other extractive/consumptive uses that continue to degrade the federal landscape that BELONGS to all citizens of the U.S.
 - An 18-month time limit on the completion of an environmental impact statement (EIS) and a 9-month limit on the completion of an environmental assessment is a pipe dream for many sensitive projects. And as I stated in number one above, why is it that such a provision should be proposed as congressional legislation and not due diligence of the agencies responsible for administering these regulations?
 - In my experience, chronic and severe underfunding and understaffing of the agencies that implement NEPA, not the provisions of the law itself, are the greatest barrier to timely and complete NEPA analyses. Underfunding and understaffing also contribute to the inadequacy of many NEPA analyses which leads to unnecessary controversy and even litigation. Instead of weakening the law, Congress should increase funding for implementation of the law so that it can function expeditiously and effectively.

4. **Clarifying definitions:** The report also suggests that Congress define “major federal action” for the purpose of determining when a full EIS is required, rather than an EA. As proposed in the report, the new definition would only include new and continuing projects that would require substantial planning, time, resources, or expenditures.

- Such a change, if implemented, could limit the types of projects that must be subjected to a more resource- and time-intensive EIS, and allow such projects instead to proceed with a lower level of analysis. Quite simply, this is poorly thought out because it short-shrifts the public and protection of public health in the interest of time.

The report further suggests certain changes designed to clarify, add certainty to, and perhaps limit the analysis of “cumulative impacts,” although these are not entirely clear. For instance, the report recommends that Congress “clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts,” although this recommendation appears to relate more to the use of an environmental baseline for purposes of measuring the impacts of a particular action, rather than per se “cumulative impacts.” In addition, it suggests that CEQ be directed to issue regulations with respect to the types of future actions that are appropriate for consideration under the cumulative impact analysis, focusing on “concrete” proposed actions rather than actions that are “reasonably foreseeable” as under current regulations.

- While I believe this merits consideration, you have not been clear what “cumulative impacts” are or should be. This has been a longstanding debate among those of us professionals who have dealt with this issue. It is not always an easy issue to put one’s arms around, but it would not be wise to use “current conditions” as the environmental baseline from which to gauge cumulative impacts. With increasing environmental threats and existing degradation still occurring from many federal actions, it is imperative that cumulative impacts consider past actions, perhaps back as far as pre-NEPA.
 - If Mr. Pombo is intent on relying on the best science for decisions, that I would suggest he just as enthusiastically support funding for developing impact analysis models to get a handle on this issue. I’ve been involved with such projects on a local level to address the effects of infill drilling projects. This can be accomplished, and while I mean no disrespect, I suggest the Task Force recommend supporting and putting their money where their mouths are to make this a reality if truth is really what you want.
5. **"Reasonable alternatives":** By requiring that alternatives proposed by individual citizens or community groups be supported by "feasibility and engineering studies" could require significant technical and financial resources. This removes citizens from the democratic process, and plain and simple is not so thinly veiled to remove the public, particularly the environmental public from participation. This is unacceptable. As one who often mediates such disputes, many solutions are resolved around the public participation process and maintains our democratic system of checks and balances, citizens being an integral part of that.

Furthermore, amending NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those that are economically and technically feasible is baseless. The National Environmental Policy Act is not only central to our ability to conserve plants, wildlife, and fish and their habitats; it is also the law which brings the public and democracy into environmental policy and management.

Conservation alternatives, whether they seem “reasonable” or not, should carry equal weight when considering whether an alternative is economically and technically feasible.

6. **Litigation Issues:** Amending NEPA to create a citizen suit provision specifying standards and procedures for judicial review of NEPA actions, potentially limiting such actions is, as I stated in item number 5 above, an effort to remove citizen participation in the democratic process under the guise of economic efficiency/streamlining and “national security.” Quite simply, this is a ridiculous assertion without any foundation. Again, delays in the process are due to underfunding of the

agencies to conduct sufficient analysis. Couple that with pressure to complete environmental analysis in 9 to 18 months, and therein lies a recipe for greater long-term, not fewer, environmental issues in the name of short-term economic gains. In the end, as I can document, the extractive industries benefit (e.g., corporate executives, stockholders) while citizens and workers are left holding the dregs of short-sighted policy.

I advise my federal clients on NEPA to give land and resource managers the information and analyses they need to avoid unnecessary damage to water, landscapes, soils, geology, native plants, wildlife, and fish and their habitats as well as the socioeconomic costs and benefits. I also rely on NEPA to allow me - as a taxpayer, voter, and member of the public - to keep track of how our tax dollars and public lands are used.

Please maintain a strong NEPA. Thank you for your attention to these concerns.

Sincerely,

Via email

**David P. Kane, PhD.
Senior Ecologist**